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18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**  
20 **SAN FRANCISCO DIVISION**

21 CHRISTOPHER L. SAYCE, individually and on  
22 behalf of all others similarly situated,

23 Plaintiff,

vs.

24 FORESCOUT TECHNOLOGIES, INC., *et al.*,

25 Defendants.

26 Case No: 3:20-CV-00076-SI  
27 **CLASS ACTION**

28 **FURTHER JOINT CASE  
MANAGEMENT STATEMENT**

Date: May 2, 2025  
Time: 3:00 p.m.  
Ctrm: 1, 17th Floor; Zoom  
Judge: Hon. Susan Illston

1 Class Representatives/Lead Plaintiffs Glazer Capital Management, L.P., Glazer Enhanced  
 2 Fund, L.P., Glazer Enhanced Offshore Fund, Ltd., Glazer Offshore Fund, Ltd. Highmark Limited, in  
 3 respect of its Segregated Account Highmark Multi-Strategy 2 (collectively the “Glazer Funds”) and  
 4 Meitav Mutual Funds Ltd. (“Meitav”) (collectively the “Lead Plaintiffs”), and Defendants Forescout  
 5 Technologies, Inc. (“Forescout” or “the Company”), Michael DeCesare (“DeCesare”) and  
 6 Christopher Harms (“Harms”) (collectively the “Defendants,” and together with Lead Plaintiffs, the  
 7 “Parties”), by their undersigned counsel, respectfully submit the following Joint Case Management  
 8 Statement pursuant to Federal Rule of Civil Procedure 26(f), the Standing Order for All Judges of  
 9 the Northern District of California updated on November 30, 2023, and Civil Local Rule 16-9.

10 On March 16, 2023, the United States Court of Appeals for the Ninth Circuit issued an opinion  
 11 in Case No. 21-16876, affirming in part, reversing in part, and remanding this Action to this Court  
 12 for further proceedings on the reinstated claims. On May 3, 2023, the Ninth Circuit mandated that  
 13 its March 16, 2023 judgment took effect as of May 3, 2023.

14 On June 16, 2023, the Defendants filed an Answer to the Second Amended Complaint (the  
 15 “SAC”). ECF No. 178.

16 On June 30, 2023, the Parties submitted their Initial Joint Case Management Statement with  
 17 a proposed stipulated schedule. ECF No. 180. On July 7, 2023, the Court held an initial case  
 18 management conference and informed the Parties that the Court would set a schedule for fact and  
 19 expert discovery after determining whether a class should be certified. ECF No. 188 at 4.

20 On May 28, 2024, the Court granted Lead Plaintiffs’ motion for class certification, certifying  
 21 the class (the “Class”), appointing Lead Plaintiffs as Class Representatives and appointing Lead  
 22 Plaintiffs’ Counsel as Class Counsel. ECF No. 227.

23 On August 9, 2024, the Parties submitted a Further Joint Case Management Statement  
 24 addressing, among other things, the proposed schedule for the remainder of the case. ECF No. 233.  
 25 On August 16, 2024, the Court held a case management conference and thereafter, on August 21,  
 26 2024, entered a Pretrial Preparation Order setting a trial date and various other pretrial deadlines.  
 27 ECF Nos. 235, 236.

1 On September 20, 2024, the Court granted Plaintiffs' unopposed motion for an order  
 2 establishing a program and schedule for notice to the Class. ECF No. 242. On January 13, 2025,  
 3 Plaintiffs filed proof of compliance with that order. ECF No. 256.

4 On December 13, 2024, the Parties submitted a Further Joint Case Management Statement  
 5 updating the Court on the status of discovery. ECF No. 254. On December 20, 2024, the Court held  
 6 a case management conference and thereafter, on December 23, 2024, entered a Minute Entry setting,  
 7 *inter alia*, a further case management conference for May 2, 2025. ECF No. 255.

8 As summarized more fully below, discovery is ongoing.

9 **I. JURISDICTION & SERVICE**

10 The SAC asserts claims arising under the Securities Exchange Act of 1934 (the "Exchange  
 11 Act"), over which this Court has jurisdiction pursuant to Section 27 of the Exchange Act, 15 U.S.C.  
 12 § 78aa, and 28 U.S.C. §§ 1331, 1337.

13 All Defendants have been served. Waivers of service were returned and filed with the Court  
 14 on January 22, 2020.

15 **II. FACTS**

16 The Parties respectfully incorporate by reference the facts as set forth in Defendants' motions  
 17 to dismiss and Lead Plaintiffs' opposition to Defendants' motions to dismiss, the Ninth Circuit's  
 18 decision, Lead Plaintiffs' Motion for Class Certification and Defendants' Opposition to the Motion  
 19 for Class Certification, and the Court's Order on Class Certification. ECF Nos. 145, 153, 196, 202,  
 20 227.

21 **III. LEGAL ISSUES**

22 The central legal issues on Lead Plaintiffs' Section 10(b) claim include whether Defendants  
 23 made materially false or misleading statements with the necessary scienter upon which Lead  
 24 Plaintiffs and other members of the Class relied, and with respect to the Section 20(a) claims include  
 25 whether Defendants were control persons and acted in good faith with respect to the underlying  
 26 conduct.

27 The Ninth Circuit's decision provides that the following claims have been reinstated: "(1) the  
 28 statements made on May 9, 2019, August 7, 2019, August 12, 2019, October 10, 2019, and November

1 6, 2019, asserting that (i) the disappointing second quarter performance was due to ‘slipped’ deals,  
 2 (ii) the ‘slipped’ deals were ‘tech wins,’ (iii) the sales pipeline was large, healthy, and continuing to  
 3 grow, and (iv) the third quarter revenue miss was due to delays in closing caused by economic  
 4 conditions in the EMEA area; and (2) the May 11, 2020, press release stating that Forescout ‘look[ed]  
 5 forward to completing [the] pending transaction with Advent.’” *Glazer Capital Mgmt., L.P. v.*  
 6 *Forescout Techs., Inc.*, 63 F.4th 747, 781-82 (9th Cir. 2023). The Class Period for the reinstated  
 7 claims runs from May 10, 2019 through May 15, 2020, both dates inclusive.

8 Defendants deny each and every allegation of wrongdoing in the SAC, dispute that Lead  
 9 Plaintiffs have asserted any cognizable claims, and contend that they have no liability in the Action.  
 10 In particular, Defendants deny, among other things, that they made any actionable misstatements or  
 11 omissions, acted with scienter, or caused the alleged losses, or that Lead Plaintiffs and the members  
 12 of the Class have suffered any damages.

13 **IV. MOTIONS**

14 The following motions have been filed in this Action:

15 (a) Motion to Appoint Lead Plaintiff. ECF No. 17. On March 23, 2020, the Court appointed  
 16 Meitav as Lead Plaintiff, and approved its selection of Pomerantz LLP as Lead Counsel.  
 17 ECF No. 27.

18 (b) Administrative Motion to Relate *The Arbitrage Fund, et al. v. Forescout Technologies,*  
 19 *Inc., et al.*, Case No. 3:20-cv-03819 (N.D. Cal.) (the “*Arbitrage Fund*” Action). ECF No.  
 20 32. On June 17, 2020, the Court found that the *Arbitrage Fund* Action was related and  
 21 that Action was reassigned to this Court. ECF No. 39.

22 (c) On July 6, 2020, Defendants moved to dismiss the amended complaint. ECF No. 44.

23 (d) Meitav filed a Motion to Consolidate and Vacate Notice and Lead Plaintiff Deadline.  
 24 ECF No. 37. On July 22, 2020, the Court consolidated the *Arbitrage Fund* Action into  
 25 this Action, reopened the lead plaintiff process, vacated its March 23, 2020 Order  
 26 appointing Meitav as the Lead Plaintiff (ECF No. 27), and denied as moot the Defendants’  
 27 pending motion to dismiss without prejudice to re-filing following the completion of the  
 28 re-opened lead plaintiff selection process. ECF No. 55.

1 (e) Thereafter, multiple motions seeking appointment of lead plaintiff to control the litigation  
2 were filed. ECF Nos. 63-64, 76, 81. On November 19, 2020, the Court appointed Meitav  
3 and the Glazer Funds as Co-Lead Plaintiffs, and Pomerantz LLP and Abraham, Fruchter,  
4 & Twersky LLP as Co-Lead Counsel. ECF No. 115.

5 (f) On December 18, 2020, Lead Plaintiffs filed a Consolidated Amended Complaint, ECF  
6 No. 116, and on January 29, 2021, Defendants filed motions to dismiss the Consolidated  
7 Amended Complaint. ECF Nos. 127, 129. On March 25, 2021, the Court issued an Order  
8 Granting in Part and Denying in Part Defendants' Motion to Dismiss the Consolidated  
9 Amended Complaint. ECF No. 139. The Court found that Lead Plaintiffs adequately  
10 pled loss causation, but failed to plead falsity and scienter.

11 (g) After the SAC was filed on May 10, 2021, Defendants again moved to dismiss on June  
12 24, 2021. ECF Nos. 143, 145. On August 2, 2021, Lead Plaintiffs filed an opposition.  
13 ECF No. 153. On August 24, 2021, Defendants filed their replies. ECF Nos. 155-56. On  
14 October 6, 2021, the Court issued an Order Granting Defendants' Motions to Dismiss the  
15 SAC and dismissed the SAC with prejudice. ECF No. 158. On October 12, 2021, the  
16 Court entered judgment in favor of the Defendants. ECF No. 162.

17 (h) On November 1, 2021, Lead Plaintiffs filed a Notice of Appeal. ECF No. 167. On March  
18 16, 2023, the SAC's dismissal was affirmed in part, reversed in part, and remanded for  
19 further proceedings. *Forescout Techs., Inc.*, 63 F.4th at 781-82.

20 (i) On March 30, 2023, Defendants filed a Petition for Rehearing or Rehearing *En Banc*,  
21 which the Ninth Circuit denied on April 25, 2023.

22 (j) On October 27, 2023, Lead Plaintiffs filed a motion to certify the Class. ECF Nos. 193,  
23 196. On December 22, 2023, Defendants filed an opposition. ECF No. 202. On March  
24 11, 2024, Plaintiffs filed their reply. ECF No. 214. On March 22, 2024, Defendants filed  
25 a sur-reply with leave of Court. ECF No. 217. After hearing oral argument on May 17,  
26 2024, the Court granted Lead Plaintiffs' motion to certify the Class on May 28, 2024.  
27 ECF Nos. 224, 227.

28

1 (k) On November 10, 2023, the Parties filed a joint statement regarding a discovery dispute  
2 that included a dispute over the relevant time period for Defendants' document  
3 production, and with the Lead Plaintiffs requesting the Court to order a substantial  
4 completion deadline. ECF No. 197. On December 13, 2023, the Parties filed another  
5 joint statement regarding a discovery dispute related to the Glazer Funds' document  
6 production, with Defendants requesting the Court to order the review and production of  
7 certain documents and seeking leave to file a sur-reply in support of their opposition to  
8 the motion for class certification. ECF No. 200. On January 12, 2024, the Parties filed a  
9 joint supplemental statement regarding the discovery disputes. ECF No. 208. On January  
10 16, 2024, the Court ordered Defendants to produce relevant documents between January  
11 1, 2018 and December 31, 2020, by February 13, 2024. ECF No. 209. The Court also  
12 ordered the Glazer Funds to produce relevant documents by February 13, 2024 and  
13 granted Defendants' leave to file a sur-reply in opposition to the motion for class  
14 certification. ECF No. 209.

15 (l) On June 26, 2024, the Parties filed a joint statement regarding a dispute over the number  
16 of depositions Lead Plaintiffs would be permitted to take in this case. ECF No. 228. On  
17 July 11, 2024, the Court granted Lead Plaintiffs leave to take fifteen depositions and ruled  
18 that if Lead Plaintiffs "still believe additional depositions are necessary after taking fifteen  
19 depositions, they may seek leave from the Court to take more." ECF No. 231.

20 (m) On August 14, 2024, the Parties filed a joint statement regarding a dispute over Lead  
21 Plaintiffs' Second and Third Sets of Requests for Production. ECF No. 234. On  
22 September 3, 2024, the Court ordered Defendants to produce responsive documents from  
23 five additional custodians; responsive documents to, from, or copying eight additional  
24 individuals; and deposition transcripts and marked exhibits from the Delaware Litigation.  
25 ECF No. 238.

26 (n) On September 5, 2024, Lead Plaintiffs filed an unopposed motion for an order  
27 establishing a program and schedule for notice to the class, which the Court granted on  
28

1 September 20, 2024. ECF Nos. 240, 242. On January 13, 2025, Plaintiffs filed proof of  
 2 compliance with that order. ECF No. 256.

- 3 (o) On September 27, 2024, the Parties filed a joint statement regarding a dispute over the  
 4 number of depositions Lead Plaintiffs would be permitted to take in this case. ECF No.  
 5 243. On October 1, 2024, the Court granted Lead Plaintiffs leave to take twenty  
 6 depositions. ECF No. 244.
- 7 (p) On October 15, 2024, Lead Plaintiffs filed an unopposed motion for the issuance of  
 8 Letters Rogatory regarding a potential witness who resides in the United Kingdom. ECF  
 9 Nos. 245, 246. On October 28, 2024, the Court granted the motion. ECF No. 247.
- 10 (q) On November 20, 2024, Lead Plaintiffs filed an unopposed motion for the issuance of  
 11 Letters Rogatory regarding two potential witnesses who reside in Australia. ECF Nos.  
 12 249, 250. On November 21, 2024, the Court granted the motion. ECF No. 251.
- 13 (r) On January 15, 2025, the Parties filed a joint statement regarding a dispute over the  
 14 adequacy of Defendants' responses to Plaintiffs' Interrogatory No. 5. ECF No. 259. On  
 15 January 21, 2025, the Court denied Plaintiffs' request to compel a further response to the  
 16 interrogatory. ECF No. 261.
- 17 (s) On April 14, 2025, the Parties filed a joint statement regarding a dispute over Defendants'  
 18 refusal to answer certain of Plaintiffs' interrogatories. Defendants contend that Plaintiffs  
 19 exceeded the permissible number of interrogatories, with Plaintiffs taking the position  
 20 they have served 19 interrogatories to date and Defendants taking the position that  
 21 Plaintiffs had served certain compound interrogatories with the result that, when those  
 22 compound requests were counted separately, Plaintiffs had served interrogatories in  
 23 excess of the allotted 25 under the Federal Rules. ECF No. 264. That dispute remains  
 24 *sub judice*.
- 25 (t) Lead Plaintiffs may file *Daubert* motions to exclude Defendants' expert(s). Defendants  
 26 anticipate filing *Daubert* motion(s) to exclude Plaintiffs' expert(s) opinions, in whole or  
 27 in part, and motion(s) for summary judgment and/or to decertify the class on or before the  
 28 dispositive motion deadline of June 20, 2025. The Parties anticipate that, as warranted,

1                   they may file other pretrial motions, including, but not limited to, motions in *limine* and/or  
 2                   *Daubert* motions, pursuant to the schedule entered by the Court.

3                   **V. AMENDMENT OF PLEADINGS**

4                   The Parties do not currently anticipate seeking leave to amend their pleadings.

5                   **VI. EVIDENCE PRESERVATION**

6                   The Parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored  
 7                   Information and are aware of their document preservation obligations under these Guidelines.

8                   **VII. DISCLOSURES**

9                   The Parties exchanged their initial disclosures on June 23, 2023. Defendants' Amended  
 10                  Initial Disclosures were served on January 21, 2025. Plaintiffs' Third Amended Disclosures were  
 11                  served on March 3, 2025.

12                  **VIII. DISCOVERY**

13                  Extensive merits discovery has been completed, including approximately twenty-six  
 14                  depositions. In addition to the merits discovery dispute pending before the Court (*see* ECF No. 264),  
 15                  Plaintiffs are still reviewing productions made by Defendants towards the end of merits discovery  
 16                  and reserve the right to raise discovery disputes with the Court if Plaintiffs believe those productions  
 17                  were incomplete. Defendants believe that any challenge to the completeness of their document  
 18                  productions would be meritless. Further detail of the discovery taken to date may be found in the  
 19                  Parties' Further Joint Case Management Statement filed with the Court on December 13, 2024 (*see*  
 20                  ECF No. 254).

21                  On April 4, 2025, Plaintiffs served one merits expert report and Defendants served three  
 22                  merits expert reports. The Parties anticipate serving rebuttal expert reports and completing expert  
 23                  discovery on or before the May 30, 2025 Expert Discovery Cut-Off set by the Court in ECF No. 263.

24                  **IX. CLASS ACTIONS**

25                  On May 28, 2024, the Court granted Lead Plaintiffs' motion for Class Certification, certifying  
 26                  the Class, appointing Lead Plaintiffs as Class Representatives and appointing Lead Plaintiffs'  
 27                  Counsel as Class Counsel. ECF No. 227.

1 On September 5, 2024, Lead Plaintiffs filed an unopposed motion for an order establishing a  
 2 program and schedule for notice to the Class, which the Court granted on September 20, 2024. ECF  
 3 Nos. 240, 242. Pursuant to the September 20, 2024 Order, Lead Plaintiffs disseminated individual  
 4 notice on October 25, 2024, and summary notice on November 11, 2024. Requests for exclusion  
 5 from the Class had to be postmarked by December 27, 2024.

6 On January 13, 2025, Plaintiffs filed a declaration of Rochelle J. Teichmiller, on behalf of  
 7 A.B. Data, Ltd., the Notice Administrator in this Action (“A.B. Data”), regarding class notice  
 8 dissemination, publication, and requests for exclusion received. ECF No. 256. As that filing details,  
 9 A.B. Data disseminated 22,678 notices to potential members of the Class or their nominees and  
 10 caused the Summary Notice to be transmitted over PR Newswire. One timely request for exclusion  
 11 from the Class was received from an individual who is not a member of the Class. The Parties are  
 12 unaware of any other requests for exclusion from the Class.

13 The Parties have reviewed the Procedural Guidance for Class Action Settlements in  
 14 accordance with the Northern District of California’s Standing Order for All Judges on the Contents  
 15 of Joint Case Management Statements.

16 **X. RELATED CASES**

17 On June 17, 2020, the Court found that the *Arbitrage Fund* Action was related. ECF No. 39.  
 18 On July 22, 2020, the Court consolidated the *Arbitrage Fund* Action into this Action. ECF No. 55.

19 After a diligent search of the federal and state court dockets, the Parties are not aware of any  
 20 other related cases or proceedings pending before this Court, any other court, or administrative body.

21 **XI. RELIEF**

22 Lead Plaintiffs seek damages sustained by the Class by reason of the acts and transactions  
 23 alleged in the SAC upon the partial disclosure of the truth or the materialization of the concealed  
 24 risks. Lead Plaintiffs and the Class also seek pre-judgment and post-judgment interest, reasonable  
 25 attorneys’ fees, expenses, and a reimbursement award for each of the Class Representatives.

26 Defendants do not believe that Lead Plaintiffs are entitled to any relief and will seek legal fees,  
 27 costs and other expenses to the extent permitted by applicable law.

1           **XII. SETTLEMENT AND ADR**

2           On May 29, 2024, the Parties engaged in an all-day mediation session before Robert Meyer,  
 3 Esq., a JAMS mediator, at the offices of Ropes & Gray in Los Angeles, California. The mediation  
 4 was unsuccessful.

5           The Parties continued to discuss the possibility of settlement in the months that followed.  
 6 Those discussions were unsuccessful.

7           On January 17, 2025, pursuant to the Court's instructions at the December 20, 2024 Case  
 8 Management Conference, the Parties jointly submitted a notice to inform the Court that they intend  
 9 to hold a second mediation before JAMS mediator Robert A. Meyer, Esq. ECF No. 260. At that  
 10 time, the Parties informed the Court that they were working to schedule that mediation on a mutually  
 11 agreeable date, to occur between the close of fact discovery and the June 13, 2025 deadline set by  
 12 the Court. *Id.* The Parties' second mediation session is scheduled for May 9, 2025.

13           **XIII. OTHER REFERENCES**

14           N/A

15           **XIV. NARROWING OF ISSUES**

16           The Parties agree that it is premature to discuss the narrowing of issues at this time and request  
 17 that the Court defer discussion of a narrowing of issues for trial until a later date.

18           **XV. SCHEDULING**

19           On August 21, 2024, the Court set forth the following schedule in its Pretrial Preparation  
 20 Order, as modified on February 18, 2025. *See* ECF Nos. 236, 263.

21 <b>Event</b>	22 <b>Date</b>	
	23 <b>ECF No. 236</b>	24 <b>ECF No. 263</b>
25           Further Case Management	26           December 20, 2024	
27           Non-Expert Discovery Cutoff	28           February 28, 2025	March 31, 2025 (for 5 specific depositions)
29           Designation of Experts	30           March 14, 2025	April 4, 2025
31           Designation of Rebuttal Experts	32           April 11, 2025	May 2, 2025

Event	Date	
	ECF No. 236	ECF No. 263
Expert Discovery Cut-Off	May 16, 2025	May 30, 2025
Dispositive Motions	June 20, 2025	
Dispositive Motions Opposition	August 8, 2025	
Dispositive Motions Reply	September 12, 2025	
Dispositive Motions Hearing	No later than September 26, 2025, at 10:00am	
Pre-Trial Paperwork	October 14, 2025	
Pre-Trial Conference	October 28, 2025, at 1:30pm	
Trial Date	November 10, 2025, at 8:30am	

#### XVI. TRIAL

Lead Plaintiffs have requested a jury trial. Per the Court's Pretrial Preparation Order, ECF No. 236, trial is set for November 10, 2025, at 8:30 a.m. and is expected to last for 15 days.

#### XVII. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

Lead Plaintiffs and all Defendants have each filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-15. *See* ECF Nos. 14, 20, 87.

#### XVIII. PROFESSIONAL CONDUCT

All attorneys of record for the Parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

#### XIX. OTHER

N/A

1 Dated: April 24, 2025

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20 *Attorneys for Defendants Michael DeCesare and  
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**CERTIFICATE OF SERVICE**

I certify that, on the date stamped above, I caused this document to be filed with the Clerk of the Court using the CM/ECF system, which will send notification of filing by email to counsel of record for all parties.

/s/ Brian P. O'Connell  
Brian P. O'Connell

## **SIGNATURE ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), the filer attests that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content, and have authorized the filing.

Dated: April 24, 2025

/s/ Brian P. O'Connell  
Brian P. O'Connell